

**New York Supreme Court
Appellate Division: First Department**

REGINA ALSTON, SANDRA VAUGHN-COOKE and
FAIR HOUSING JUSTICE CENTER,

Plaintiffs-Respondents,

against

STARRETT CITY and GRENADIER REALTY CORP.,

Defendants-Appellants.

**BRIEF FOR AMICUS CURIAE
THE CITY OF NEW YORK**

AARON BLOOM
BARBARA GRAVES-POLLER
DORIS BERNHARDT
of Counsel

ZACHARY W. CARTER
*Corporation Counsel
of the City of New York*
Attorney for the City of New
York, *amicus curiae*
100 Church Street
New York, New York 10007
212-356-2274or -2275
bgraves@law.nyc.gov

August 3, 2017

TABLE OF CONTENTS

	Page
INTEREST OF AMICUS CURIAE.....	1
STATEMENT OF THE CASE	3
A. The New York City Human Rights Law.....	3
B. The CHRL’s prohibition on lawful source of income discrimination	5
C. The LINC Program	7
ARGUMENT.....	10
THE CITY HUMAN RIGHTS LAW’S SOURCE OF INCOME PROTECTIONS APPLY TO ALL FORMS OF PUBLIC ASSISTANCE, INCLUDING LINC	10
A. Local Law 10 was intended to cover housing assistance programs other than Section 8.....	10
B. Local Law 10’s source of income protections do not offend the Urstadt Law.....	13
CONCLUSION	16
PRINTING SPECIFICATIONS STATEMENT	17

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Acosta v. Loews Corp.</i> , 276 A.D.2d 214 (1st Dep't 2000).....	3
<i>Albunio v. City of New York</i> , 16 N.Y.3d 472 (2011).....	4, 12
<i>Bennett v. Health Mgt. Sys., Inc.</i> , 92 A.D.3d 29 (1st Dep't 2011).....	4
<i>Cales v. New Castle Hill Realty</i> , Docket No. 10-Civ-3426, 2011 U.S. Dist. LEXIS 9619 (S.D.N.Y. Jan. 31, 2011)	12
<i>Dino Realty Corp. v. Khan</i> , 46 Misc. 3d 71 (2d Dep't 2014)	12
<i>Dunbar Partners L.P. v Landon</i> , 277 A.D.2d 129 (1st Dep't 2000).....	11
<i>Harris & Assocs., Inc. v. de Leon</i> , 84 N.Y.2d 698 (1994).....	13
<i>L.C. v. Lefrak Org. Inc.</i> , 987 F.Supp. 2d 391 (S.D.N.Y. 2013).....	12
<i>Matter of Santiago-Monteverde</i> , 24 N.Y.3d 283 (2014).....	11
<i>Short v. Manhattan Apts., Inc.</i> , 916 F.Supp. 2d 375 (S.D.N.Y. 2012).....	12
<i>Tapia v. Successful Management, Corp.</i> , 79 A.D.3d 422 (1st Dep't 2010).....	14

TABLE OF AUTHORITIES (cont'd)

	Page(s)
<i>Williams v. N.Y.C. Hous. Auth.</i> , 61 A.D.3d 62 (1st Dep't 2009)	5
Administrative Decisions	
<i>Agosto v. Am. Constr. Assocs., LLC</i> , OATH Index No. 1964/15 (April 5, 2017)	13
<i>Howe v. Best Apartments</i> , OATH Index No. 2602/2014 (March 14, 2016)	13
Statutes	
N.Y.C. Administrative Code § 8-101.....	3
N.Y.C. Administrative Code § 8-102.....	5, 10
N.Y.C. Administrative Code § 8-105.....	13
N.Y.C. Administrative Code § 8-107.....	4, 5, 10
N.Y.C. Administrative Code § 8-130.....	4, 12
Rules	
68 R.C.N.Y. § 7-01	7
68 R.C.N.Y. § 7-06	8
68 R.C.N.Y. § 7-09	8, 9
68 R.C.N.Y. § 7-14	8
68 R.C.N.Y. § 7-17	9
68 R.C.N.Y. § 7-21	8

TABLE OF AUTHORITIES (cont'd)

	Page(s)
Legislative History	
Local Law Bill Jacket, Local Law 39 of 1991, Report of the Legal Division, Committee on General Welfare	3
Minutes of the N.Y.C. Council Comm. on General Welfare (April 11, 2007).....	6
Report of the Governmental Affairs Division, N.Y.C. Council Comm. on General Welfare (April 11, 2007).....	5
Other Material	
Benjamin W. Fisher, et al., <i>Leaving Homelessness Behind: Housing Decisions among Families Exiting Shelter</i> , 24 Housing Policy Debate 364-386 (2014)	7
Department of Housing and Urban Development, “Housing Choice Vouchers Fact Sheet”	11
HRA Notice to Landlords	9
New York City, <i>Turning the Tide on Homelessness in New York City</i> (2017)	8
Michael Schill, <i>Local Enforcement of Laws Prohibiting Discrimination in Housing: the New York City Human Rights Commission</i> , 23 Fordham Urb. L. J. 991 (1996).....	4

INTEREST OF AMICUS CURIAE

New York City's robust Human Rights Law reflects the very best of our city's values: inclusion, fairness, and access to opportunity for the most vulnerable members of our communities. It prohibits discrimination in housing, employment, education, training, and public accommodations. The City submits this amicus brief to defend this vital law, and its prohibition on "source of income" discrimination, against the defendants' attempt to improperly narrow it.

The City Council has progressively strengthened the City Human Rights Law over the years and has emphasized its unique breadth. In 2008, the Council augmented the law's fair housing scope by passing Local Law 10, which bars landlords from discriminating against renters based on their "lawful source of income," including housing assistance or public assistance programs. As New York County Supreme Court (Hagler, J.) correctly concluded, Local Law 10 plainly covers the housing vouchers issued by the City's Living in Communities ("LINC") program, which provides assistance to individuals and families attempting to leave the City's homeless and domestic violence shelters. This Court should affirm.

Adopting defendants' strained reading of the City Human Rights Law and their speculative arguments based on the State's Urstadt Law, which would exclude all housing subsidies except federal Section 8 vouchers from Local Law 10's scope, would undermine the Human Rights Law's purpose. Source of income discrimination against recipients of government assistance is pervasive and imposes real costs, regardless of whether the government assistance comes in the form of a Section 8 voucher, a rental assistance check from the HIV/AIDS Services Administration, or a LINC voucher. It burdens already struggling households. It also increases competition for other affordable housing, deepens the persistent homelessness crisis, and raises the City's shelter costs. And source of income discrimination often serves as a proxy for other forms of prejudice, harming persons already disadvantaged in the housing market.

Nothing in the City Human Rights Law, the history of its amendments, or the Urstadt Law requires this Court to open a door to discrimination that, after careful consideration, the City Council saw fit to close.

STATEMENT OF THE CASE

A. The New York City Human Rights Law

First codified in 1965,¹ in the wake of federal and state civil rights legislation, the New York City Human Rights Law (“CHRL”) prohibits discriminatory practices in housing, employment, education, training, lending, and public accommodations. *See* New York City Administrative Code (“Admin. Code”) § 8-101 *et seq.* The CHRL identifies prejudice as one of the greatest dangers “to the health, morals, safety and welfare of the city and its inhabitants” and declares that bigotry and discrimination “menace the institutions and foundation of a free democratic state.” Admin. Code § 8-101.

The City has extended the CHRL’s reach repeatedly over the years to reflect the knowledge and experience gained through its CHRL enforcement. *See Acosta v. Loews Corp.*, 276 A.D.2d 214, 218 (1st Dep’t 2000). In the area of housing, the CHRL has steadily expanded to prohibit discrimination against renters and buyers based on race, ethnicity, gender, marital status, disability, lawful occupation, and

¹ *See* Local Law Bill Jacket, Local Law 39 of 1991, Report of the Legal Division, Committee on General Welfare, Section-by-Section Analysis at 1.

lawful source of income among other characteristics. *See* Admin. Code § 8-107.²

In 2005, the City Council passed Local Law 85, known as the Restoration Act, to “clarify the scope of New York City’s Human Rights Law, which, the Council found ha[d] been construed too narrowly.” *Albunio v. City of New York*, 16 N.Y.3d 472, 477 (2011) (citations omitted). The heart of the Restoration Act is its requirement that the CHRL be “construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof.” Admin. Code § 8-130. This expansive language requires courts to interpret the CHRL “broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible.” *Albunio*, 16 N.Y.3d at 477-78; *see also Bennett v. Health Mgt. Sys., Inc.*, 92 A.D.3d 29, 34 (1st Dep’t 2011). The Restoration Act “meld[s] the broadest vision of social justice with the strongest law enforcement deterrent” to promote its goal of eliminating discrimination as a factor in decisions made by landlords, employers

² *See also* Michael Schill, *Local Enforcement of Laws Prohibiting Discrimination in Housing: the New York City Human Rights Commission*, 23 Fordham Urb. L. J. 991, 1010-1019 (1996) (describing progressive expansion of CHRL’s housing protections).

and others. *Williams v. N.Y.C. Hous. Auth.*, 61 A.D.3d 62, 67 (1st Dep’t 2009). A 2016 CHRL amendment further clarified that these cases properly reflect the law’s objective of being “maximally protective of civil rights in all circumstances.” L.L. 35/2016, § 1.

B. The CHRL’s prohibition on lawful source of income discrimination

In 2008, the City enacted Local Law 10, which amended the CHRL to prohibit discrimination against tenants and prospective tenants based on their “lawful source of income.” Admin. Code § 8-107(5)(a). Local Law 10 provides: “The term ‘lawful source of income’ shall include income derived from social security, or any form of federal, state or local public assistance or housing assistance including section 8 vouchers.” Admin. Code § 8-102(25).

The City Council passed Local Law 10 to combat the discrimination and stigma that those who rely on housing and public assistance suffer.³ The law was intended to dismantle housing market barriers for these low-income households, many of whom “encounter

³ See Report of the Governmental Affairs Division, N.Y.C. Council Comm. on General Welfare, at 5-6 (April 11, 2007), available at <http://on.nyc.gov/2uwb67>.

significant amounts of discrimination from landlords” and face rejection because they rely on government assistance.⁴

The Council also recognized that source of income discrimination may act as a proxy for discrimination based on race, disability or other protected status, thereby harming groups already vulnerable to negative bias.⁵ Demographic data from the City Department of Housing Preservation and Development (“HPD”) underscore the significant potential for interplay between source of income discrimination and other forms of unlawful prejudice: Some 46% of HPD’s Section 8 voucher holders are persons with disabilities; 34% are elderly New Yorkers; and more than half identify as racial minorities.⁶ Research confirms that rejection of housing vouchers may in fact be “a disguised

⁴ See Report of the Governmental Affairs Division, *supra* note 3, at 5-6.

⁵ See Transcript of the Minutes of the N.Y.C. Council Comm. on General Welfare (April 11, 2007) at 12:8-14:2, available at <http://on.nyc.gov/2uwb67>.

⁶ See Hous. Preservation and Dev., DTR Section 8 Prgm. Indicators (Dec. 2016), available at <http://on.nyc.gov/2u4QGi0>.

form of discrimination against” these groups, particularly racial and ethnic minorities.⁷

C. The LINC Program

The City Human Resources Administration (“HRA”) and the Department of Homeless Services developed LINC in 2014 and 2015 to help persons living in City homeless and domestic violence shelters transition into stable housing. 68 R.C.N.Y. § 7-01 *et seq.* LINC’s housing voucher component consists of six subsections, each targeting a population with different housing related needs. Those populations include low-income working adults and families, families with multiple shelter stays, households that include domestic violence survivors, the elderly, adults with disabilities, and families that move out of shelter to reunite with friends and relatives. *Id.* Through December 2016, over 14,800 New Yorkers had exited the shelter system for stable homes in communities throughout the City with LINC assistance.⁸

⁷ See Benjamin W. Fisher, *et al.*, *Leaving Homelessness Behind: Housing Decisions among Families Exiting Shelter*, 24 Housing Policy Debate 364-386 (2014), available at <http://bit.ly/2u7Lyhu>.

⁸ See *Turning the Tide on Homelessness in New York City* at 45 (2017), available at <http://on.nyc.gov/2r2SGG9>.

In addition to connecting participants with a range of stabilizing social services that facilitate community living,⁹ LINC provides a rental supplement based on household size that, in most cases, HRA pays directly to landlords.¹⁰ *See* 68 R.C.N.Y. §§ 7-06, 7-14, 7-21. LINC also covers “moving expenses, a security deposit voucher equal to one month’s rent and, if applicable, a broker’s fee equal to up to one month’s rent.” 68 R.C.N.Y. § 7-09(d); 7-17(c).

As part of LINC’s mission to help participants achieve long term stability, most sections of the LINC program require a landlord to enter into a lease rider. Thereunder, the landlord agrees to renew a LINC tenant’s lease for a second year at the same rent as the first year of the tenancy and limit rent increases for the following three years to the increases approved by the Rent Guidelines Board for rent stabilized

⁹ *See* Transcript of the Minutes of the N.Y.C. Council Committee on General Welfare (January 21, 2015) at 79:11-81:16, available at <http://on.nyc.gov/2vb4kkG>.

¹⁰ Some participants in LINC I-V also pay a portion of their rent directly to the landlord. *See* 68 R.C.N.Y. §§ 7-06, 7-14, 7-21. LINC VI is a program aimed at helping shelter residents reunite with friends and relatives by renting rooms from “host families.” *See* 68 R.N.Y.C. § 7-20 *et seq.* Since LINC VI participants do not secure entire apartments from traditional landlords, HRA rental assistance procedures and other terms of LINC VI differ considerably from those of the LINC I-V programs. In most cases, HRA pays LINC VI host families directly. *See* 68 R.C.N.Y. § 7-21.

leases, subject to the LINC participant's eligibility for the program.¹¹ Once a LINC participant vacates an apartment or completes his or her period of LINC eligibility, these limits cease to apply.

The City actively promotes LINC by offering incentives to landlords and brokers, such as signing bonuses and enhanced brokers' fees.¹² HRA also provides a telephone support line for landlords and a fund from which landlords may receive up to \$3,000 for rental arrears during the LINC participant's tenancy or repairs for damage done to the apartment that are not covered by the security voucher.¹³ The City added these attractive features to the LINC program based on its experience with other voucher programs and feedback from landlords.¹⁴

In sum, LINC is a social services program that provides rental assistance to some of the most vulnerable men, women, and children in the City so that they can transition out of City shelters, reestablish community ties, and maintain stable living arrangements.

¹¹ The lease rider for all LINC programs, except LINC VI, is available at <http://on.nyc.gov/2ucycf6>.

¹² See HRA Notices to Landlords, available at <http://on.nyc.gov/2vjC0z5> and <https://goo.gl/oExGgd>.

¹³ See HRA Notice to Landlords <https://goo.gl/4y8C3P>.

¹⁴ See January 21, 2015 *Committee Minutes*, *supra* note 9, 19:6-23:16.

ARGUMENT

THE CITY HUMAN RIGHTS LAW'S SOURCE OF INCOME PROTECTIONS APPLY TO ALL FORMS OF PUBLIC ASSISTANCE, INCLUDING LINC

The City supports the arguments of the plaintiffs set forth in their respondents' brief, and writes briefly here to highlight a few points important to preserving the CHRL's proper scope and application.

A. Local Law 10 was intended to cover housing assistance programs other than Section 8.

Supreme Court correctly rejected defendants' argument that LINC vouchers do not qualify as a "lawful source of income" protected under Local Law 10. Local Law 10 amended the CHRL to prohibit landlords from discriminating against renters based on their "lawful source of income," defined to "include income derived from social security, or *any form* of federal, state or *local public assistance or housing assistance* including section 8 vouchers." Admin. Code §§ 8-102(25) (emphasis added); 8-107(5)(a). LINC vouchers—a form of local housing assistance and local public assistance—plainly meet this definition.

Defendants' contrary interpretation is illogical. They contend that the word "income" excludes government assistance provided directly to

a landlord, such as LINC rental assistance (Def. Br. at 21-22). Yet, the statute’s use of Section 8 vouchers as a paradigmatic lawful source of “income” directly refutes that argument. Just as with LINC vouchers, Section 8 voucher payments go directly to landlords, not tenants.¹⁵ Similarly belying defendants’ argument, the statutory definition also includes “public assistance”—a term that the Court of Appeals has explained includes many “social programs such as food stamps, vouchers, and the like, that do not involve payments to the recipients of the benefit.” *Matter of Santiago-Monteverde*, 24 N.Y.3d 283, 290 (2014); *see Dunbar Partners L.P. v Landon*, 277 A.D.2d 129, 129 (1st Dep’t 2000) (identifying payments to the landlord from DHCR and HRA as a form of public assistance).

As Supreme Court explained, defendants’ abstruse parsing of the statute’s punctuation provides no basis for reading the phrase “including Section 8 vouchers” to *exclude* all housing assistance other than Section 8. Indeed, defendants ask the Court to ignore the City Council’s command to construe the CHRL “broadly in favor of

¹⁵ See U.S. Dep’t of Housing and Urban Dev., “Housing Choice Vouchers Fact Sheet,” available at <http://bit.ly/2uCufUP>.

discrimination plaintiffs, to the extent that such a construction is reasonably possible,” *Albunio*, 16 N.Y.3d at 477-78; see Admin. Code § 8-130. Moreover, as plaintiffs’ brief describes in detail, at 18-23, the legislative history of Local Law 10 amply confirms that the Council intended Local Law 10 to cover Section 8 *and* other types of government assistance.

Thus, it is not surprising that the courts have consistently construed Local Law 10 to prohibit discrimination against tenants and prospective tenants based on their use of *any* lawful source of income, including housing voucher programs other than Section 8. See *Short v. Manhattan Apts., Inc.*, 916 F. Supp. 2d 375, 400 (S.D.N.Y. 2012) (HRA’s HIV/AIDS Services Administration housing voucher); *L.C. v. Lefrak Org. Inc.*, 987 F. Supp. 2d 391, 404 (S.D.N.Y. 2013) (same); *Cales v. New Castle Hill Realty*, Docket No. 10-Civ-3426, 2011 U.S. Dist. LEXIS 9619 at *4, 16 (S.D.N.Y. Jan. 31, 2011) (Advantage housing program voucher); see also *Dino Realty Corp. v. Khan*, 46 Misc.3d 71, 72-73 (2d Dep’t 2014) (assistance from charitable organization).

The City Commission on Human Rights has done the same. See *Agosto v. Am. Constr. Assocs., LLC*, OATH Index No. 1964/15 at 6, 10

(April 5, 2017) (HRA security deposit voucher), available at <http://on.nyc.gov/2uNpisW>; *Howe v. Best Apartments*, OATH Index No. 2602/2014 at 17 (March 14, 2016) (CHRL bars discrimination based on “use of Section 8 or other types of public assistance vouchers”), available at <http://bit.ly/2u2v331>. Were there any doubt about the scope of Local Law 10, and were it not already resolved by the express directive that the CHRL must be afforded the broadest available construction, the Commission’s reasonable interpretation would put the matter to rest under principles of agency deference. *See Harris & Assocs., Inc. v. de Leon*, 84 N.Y.2d 698, 706 (1994); Admin. Code § 8-105 (charging the Commission with responsibility for implementing the CHRL).

Defendants’ construction of the CHRL violates the statutory text and purpose. It has been uniformly rejected by the courts and the Commission. This Court should reject it as well.

B. Local Law 10’s source of income protections do not offend the Urstadt Law.

Defendants-appellants also try to use the State’s Urstadt Law to impose their improperly cramped construction on Local Law 10, again seeking to exclude protection for the use of any form of housing

assistance besides Section 8. Contrary to defendants' contention, applying the CHRL, as it is written, to bar discrimination based on *any* lawful source of income, including LINC vouchers, does not violate the Urstadt Law.

Indeed, this Court has previously rejected the same argument, holding that the CHRL's source of income protections do not violate the Urstadt Law because the antidiscrimination law does not "expand the set of buildings subject to rent control or stabilization." *Tapia v. Successful Management, Corp.*, 79 A.D.3d 422, 425 (1st Dep't 2010). *Tapia* involved Section 8 vouchers, but nothing about applying the CHRL to protect LINC voucher users from discrimination warrants a contrary finding. Preventing such discrimination does not place unregulated apartments within the complex systems of rent stabilization and rent control. LINC is a social service program focused on helping homeless families and individuals find and maintain permanent housing. Both the CHRL and LINC aim to enable disadvantaged individuals to fully participate in communities, not to regulate the New York City rental market.

Finally, as plaintiffs correctly note, defendants' Urstadt Law arguments rely on various claimed facts outside the pleadings, as well as conjecture about the potential volume of LINC participants in their properties and the possible conflicts with other statutory and regulatory requirements that a hypothetical flood of LINC tenancies could pose. On this basis, too, Supreme Court properly rejected defendants' speculative arguments as a basis for dismissing the CHRL discrimination claims.

CONCLUSION

This Court should affirm Supreme Court's decision and order.

Dated: New York, NY
August 3, 2017

Respectfully submitted,

ZACHARY W. CARTER
*Corporation Counsel
of the City of New York*
Attorney for the City of New York,
amicus curiae

By: 

BARBARA GRAVES-POLLER
Assistant Corporation Counsel
100 Church Street
New York, NY 10007
212-356-2275
bgraves@law.nyc.gov

AARON M. BLOOM
BARBARA GRAVES-POLLER
DORIS BERNHARDT
of Counsel

PRINTING SPECIFICATIONS STATEMENT

This brief was prepared with Microsoft Word 2010, using Century Schoolbook 14 pt. for the body and Century Schoolbook 12 pt. for footnotes. According to the aforementioned processing system, the portions of the brief that must be included in a word count pursuant to 22 N.Y.C.R.R. § 600.10(d)(1)(i) contain 2,708 words.